

Decision 05-02-048 February 24, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E), a California Corporation, and the City of Concord, a California Municipal Corporation, for an Order Authorizing the Sale and Conveyance of Certain Electric Streetlight Facilities Pursuant to Public Utilities Code Section 851.

Application 04-11-022
(Filed November 22, 2004)

O P I N I O N

1. Summary

We approve the sale and conveyance by Pacific Gas and Electric Company (PG&E) of its streetlight facilities located within the City of Concord (City). We relieve PG&E of the public duties and responsibilities of owning, operating and maintaining the streetlight facilities once the transfer and conveyance are complete. We also approve an agreement between PG&E and the Commission's Office of Ratepayer Advocates (ORA) to refer the issue of proceeds of this sale to our gain-on-sale proceeding, Rulemaking (R.) 04-09-003.

2. Procedural Background

PG&E is a public utility subject to the jurisdiction of the Commission. On November 22, 2004, it filed an application for authority to sell and convey the streetlight system to City, which intends to remain PG&E's customer on the utility's LS-2 tariff. Notice of the application appeared in the Daily Calendar on November 30, 2004. The application includes detailed information on original cost less depreciation, effect on rate base and explanation of accounting features, as requested by ORA in similar streetlight transactions in the past.

ORA on December 27, 2004, protested the application solely on grounds that PG&E intends to post the entire gain on sale to shareholders, as it has done in the past in similar streetlight sales. ORA argues that ratepayers have shouldered revenue requirements of the streetlight system, such as operating and maintenance expenses and property taxes, and should share in the gain. ORA proposed that the gain-on-sale issue be referred to our pending gain-on-sale rulemaking proceeding, R.04-09-003.

In reply comments, PG&E continued to assert that the gain should go to shareholders consistent with the Commission's findings in its "Redding II" decision in 1989. (*Re Rate-Making Treatment of Capital Gains Derived From the Sale of a Public Utility System Serving an Area Annexed by a Municipality or Public Entity* (1989) Decision (D.) 89-07-016.) PG&E agreed, however, that it is appropriate in this case to allocate the gain on sale pursuant to the final order in R.04-09-003, thus resolving the protest filed by ORA.

3. Proposed Sales

The City seeks to purchase the streetlight facilities from PG&E because it will result in lower electricity bills for streetlight service. Currently, the City takes streetlight service under the LS-1 rate, which includes PG&E's costs of owning, operating and maintaining the streetlights. The City believes it can lower overall costs for streetlight service by purchasing, operating and maintaining the facilities itself and paying PG&E the lower LS-2 tariff for electricity.

PG&E states that it agreed to sell the streetlight facilities because it has received a fair offer from the City, reflecting replacement cost new less depreciation. Both parties agree that the City would be successful if it sought to obtain ownership of the streetlights through an eminent domain action. In such

a condemnation proceeding, a court would set the purchase price and each of the parties would incur the costs of litigation.

The purchase price for the streetlight facilities is \$1,208,806, plus the net value of any additions to and retirements from the system that PG&E has made after January 5, 2004. A table attached to the application as an exhibit shows a pre-tax gain on sale of \$794,249 and an after-tax gain on sale of \$407,950. PG&E's rate base will decrease by \$341,864 upon Commission approval and close of the sale.

4. Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Pub. Util. Code § 851.) The streetlight facilities presently are used for the sale of electrical services, and Pub. Util. Code § 851 applies.

PG&E represents that there will be a decrease of \$341,864 in its rate base as a result of the sale, and it provides the declaration of its manager of capital accounting that ratepayers have not contributed capital to the streetlight system, either in its initial purchase or in any subsequent modifications. PG&E states that the conveyance of the streetlight system will not adversely affect ratepayers, who will see neither a decline in service nor an increase in cost as a result of the transfer. While maintaining that the gain on sale should go to shareholders in accordance with D.89-07-016, PG&E has agreed to follow the recommendation of ORA that the gain be booked in accordance with the final decision in our gain-on-sale rulemaking proceeding, R.04-09-003.

Under the California Environmental Quality Act (CEQA), we must consider the environmental consequences of projects, as defined, that are subject

to our discretionary approval. (Pub. Resources Code § 21080.) In this instance, the change in ownership will not result in any significant effect on the environment because the City will use and maintain the existing luminaries and facilities of the streetlights in the same manner now exercised by PG&E. There are no plans at this time to install any new or additional equipment on the system as stated in the Sale of Streetlight Facilities Agreement attached to the application as Exhibit A. Thus, it can be seen with certainty that there is no possibility that the transfer of ownership of the existing facilities may have a significant effect on the environment. Accordingly, we find that the transfer of ownership is exempt from further review by this Commission pursuant to CEQA Guideline 15061(b)(3).

5. Categorization and Need for Hearings

In Resolution ALJ 176-3143, dated December 2, 2004, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. In the absence of protests, public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3143 are affirmed.

6. Comments on Draft Decision

Since this proceeding is uncontested and we grant the relief requested, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of this Commission.

2. Notice of the filing of the application appeared in the Daily Calendar on November 30, 2004.

3. City is a municipality created and existing under the laws of the State of California.

4. PG&E has agreed to sell the streetlight system, as defined in the application, to City.

5. The streetlight system is located entirely within the City.

6. The purchase and sale agreement provides that PG&E will be relieved of its obligations for owning, operating and maintaining the streetlight facilities.

7. The sale and conveyance of the streetlight system will not adversely affect existing ratepayers.

8. The City will use and maintain the existing luminaries and facilities of the streetlights in the same manner now exercised by PG&E.

9. ORA protested the application solely on the basis that PG&E intended to post the entire gain on sale to shareholders.

10. PG&E has agreed to refer the gain-on-sale issue to our pending gain-on-sale rulemaking, R.04-09-003.

11. As a result of PG&E's agreement to refer the gain-on-sale issue, ORA has withdrawn its protest.

Conclusions of Law

1. A public hearing is not necessary.

2. The sale and conveyance of the streetlight system is subject to Pub. Util. Code § 851.

3. The sale and conveyance of the streetlight system does not require further CEQA review by the Commission.

4. The sale and conveyance of the streetlight system should be approved.

5. PG&E should be authorized to enter into the purchase and sale agreement attached to the application.

6. PG&E should be relieved of the public duties and responsibilities of owning, operating, and maintaining the streetlight system concurrently with the sale and conveyance of the system.

7. The proposed sale and conveyance of the streetlight system meets the criteria for a public utility to sell utility property to a municipality or government entity.

8. PG&E should be directed to book gain on sale of this transaction in accordance with the final decision approved by the Commission in R.04-09-003.

9. The order should be effective today to allow the proposed sale to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may sell and convey to the City of Concord the streetlight facilities described in the application (Streetlight Facilities), subject to the terms and conditions described therein.

2. PG&E shall book gain on sale from the transaction in a temporary account, pending a final decision by this Commission in Rulemaking 04-09-003, at which time such gain on sale shall be booked in accordance with that final decision.

3. The change in ownership of the streetlight facilities qualifies for an exemption from the California Environment Quality Act (CEQA) under CEQA Guideline 1506(b)(3) and, therefore, additional environmental review is not required.

4. The authority granted herein shall expire if not exercised within one year of the date of this order.

5. PG&E shall be relieved of the public duties and responsibilities of owning, operating, and maintaining the Streetlight Facilities concurrently with the sale and conveyance of the Streetlight Facilities.

6. Application 04-11-022 is closed.

This order is effective today.

Dated February 24, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners